

# Doing Business in Germany

**Now, for tomorrow**



# Preface

This guide is one in a series of guides designed to provide an overview of the key issues facing those considering doing business outside their home territory.

Whilst every effort has been made to ensure accuracy, information contained in this guide may not be comprehensive and recipients should not act upon it without seeking professional advice. Facts and figures as presented are correct at the time of writing.

Baker Tilly International is one of the world's leading networks of independently owned and managed accountancy and business advisory firms, and is represented by 35,000 people in 145 territories worldwide. Its members provide high-quality accounting, assurance, tax and specialist business advice to mid-market corporates, privately held businesses, governments, NGOs and not-for-profits.

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# 1 Fact Sheet

Facts and figures presented are correct as at 25 November 2018.

## Geography

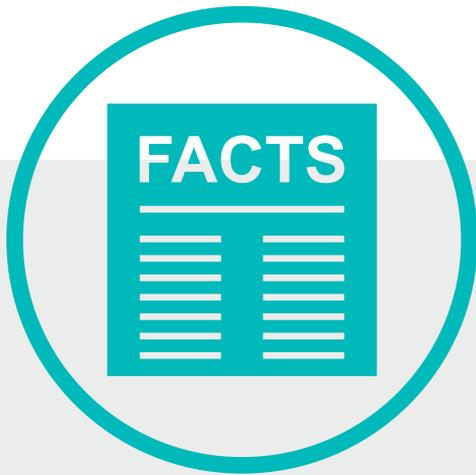
Location:	Central Europe
Area:	357,000 km <sup>2</sup>
Land boundaries:	Austria, Belgium, Czech Republic, Denmark, France, Luxembourg, the Netherlands, Poland, Switzerland
Coastline:	The North Sea and the Baltic Sea
Climate:	Temperate: oceanic climate in the north; continental climate in the south
Terrain:	Lowlands in north, uplands in centre, Bavarian Alps in south
Time zone:	GMT +1

## People

Population:	82.85 million (2018)
Religion:	Roman Catholic 29%, Protestant 27%, Muslim 4.4%, Orthodox Christian 1.9%, other 1.7%, none or members of unrecorded religious groups 36% (2015 estimates)
Language:	German (official)

## Government

Country name:	Federal Republic of Germany
Government type:	Federal parliamentary republic
Capital:	Berlin
Administrative divisions:	The Federal Republic of Germany comprises 16 Federal States (capital cities in brackets): <ul style="list-style-type: none"><li>• Baden-Württemberg (Stuttgart)</li><li>• Bavaria (Munich)</li><li>• Berlin</li><li>• Brandenburg (Potsdam)</li><li>• Bremen (Bremen)</li></ul>



- Hamburg (Hamburg)
- Hesse (Wiesbaden)
- Lower Saxony (Hanover)
- Mecklenburg-Vorpommern (Schwerin)
- North Rhine-Westphalia (Düsseldorf)
- Rhineland-Palatinate (Mainz)
- Saarland (Saarbrücken)
- Saxony (Dresden)
- Saxony-Anhalt (Magdeburg)
- Schleswig Holstein (Kiel)
- Thuringia (Erfurt)

### **Political situation**

The Federal President's (Bundespräsident) role is to represent Germany and the German Government at important events.

The Federal Government (Bundesregierung) consists of the Chancellor (Bundeskanzler) and their Cabinet (Bundeskabinett). It is responsible for executing the laws that have been decided by the Federal Parliament (Bundestag) and the Council of States (Bundesrat). The Federal Parliament and the Council of States have legislative power.

### **Economy**

GDP – per capita:	US\$44,470 (2017)
GDP – real growth rate:	2.2% (2017)
Labour force:	43.47 million (2017)
Unemployment:	3.3% (October 2018)
Currency (code):	Euro (€)



# 2 Business Entities and Accounting

## 2.1 Companies

The common types of companies are:

- The private limited liability company (Gesellschaft mit beschränkter Haftung – GmbH)
- The public limited liability company (Aktiengesellschaft – AG).

Shareholders are liable for a company's debt only to the amount of their capital share. Both types of corporation can be founded by one or more persons, either individuals or companies, domestic or foreign.

A foreign company which establishes a German corporation must prove its existence in the foreign country through a certificate of incorporation and certified extracts from the home country's commercial register.

### 2.1.1 Private limited liability company

The GmbH is the most common form of corporation in Germany since it offers flexibility to its shareholders. The shareholders can exert their influence in the shareholders' meeting.

The minimum share capital requirement is €25,000. The articles of association (Gesellschaftsvertrag) must be certified by a public notary, and registration with the commercial registry is required. The shareholders elect the managing directors (Geschäftsführer).

Transfer of shares is permitted only by assignment or upon inheritance.

### 2.1.2 Business company with limited liability

As a sub-form of a GmbH, a business company with limited liability is a legal entity with equity capital assigned to the shareholders. Each sha-

reholder's liability is limited to its nominal equity. A shareholder may transfer shares only if the share purchase agreement is notarised.

A business company with limited liability is formed by one or more legal or natural persons making a cash capital contribution. The minimum share capital is €1. One quarter of net annual income cannot be used for dividend payments and must be allocated to reserves. The set-up costs can be reduced compared to a GmbH if a standard form of by-laws is used. A business company with limited liability comes into legal existence on entry in the commercial register.<sup>5</sup> A business company with limited liability has two layers of governance: the shareholders' meeting (Gesellschafterversammlung) and the managing director (Geschäftsführer). The shareholders' meeting appoints the managing director who manages the company's operations.

### 2.1.3 Public limited liability company

The AG is the form widely adopted by large companies and requires a minimum share capital of €50,000. An AG may be listed on the stock exchange and has easily transferrable shares. The articles of incorporation (Satzung) must be certified by a public notary. The AG has three layers of governance: the annual shareholder meeting (Hauptversammlung) appoints the supervisory board (Aufsichtsrat). The supervisory board appoints the board of management (Vorstand). Individuals are not permitted to sit on both boards. The AG must register with the German commercial registry and file a statutory report (Gründungsbericht). Shareholders' decisions are made by way of shareholders' resolutions taken at a general meeting of the AG.

## 2.2 Partnerships

There are several kinds of partnerships in Germany, of which the most important are:

- General partnership (offene Handelsgesellschaft – OHG) – joint liability of all partners for all partnership debts without restrictions
- Limited partnership (Kommanditgesellschaft – KG) – full liability of the general partner(s) (Komplementär) and limited liability of limited partners (Kommanditisten) to the amount of their subscribed capital contribution.

Both types of partnership can be established with a minimum of two partners who may be German or foreign, individuals, corporations, or partnerships. There is no prescribed format for a partnership agreement. However, both types of partnership are obliged to apply for registration at the German commercial registry. A partnership is managed and represented by the general partners; the rights and duties of limited partners are restricted.

The GmbH & Co. KG is a special type of limited partnership, in which a corporation is the general partner of a KG. This form combines a partnership with the advantages of the liability limitations of a corporation to a certain degree.

A silent partnership is the participation in the trade or business of another person (whether an individual or a legal entity) whose association with the partnership is not outwardly apparent to the public.

## 2.3 Sole Proprietorship

In a sole proprietorship the owner is engaged in commercial business. The owner must register the business at the commercial registry and is liable for their professional actions without limit. They must be a German resident or be of European nationality. Individuals from a country outside Europe require a residence permit before they can form a sole proprietorship (see 4.2).

## 2.4 Branches

A non-German company can set up a place of business in Germany without forming a German subsidiary company. Even though a branch may conclude contracts in its name, it does not represent a separate independent legal entity but is considered an extension of the foreign company in Germany. Thus, all responsibilities for liabilities of a German branch lie with the foreign company.

There are only a few formalities to establish a branch in Germany, including registration at the commercial registry and notification to the local municipality on commencement. Thus, a branch is the easiest way for a foreign company to execute its activities in Germany.

## 2.5 Audit and Accounting Requirements

Provisions concerning accounting requirements are contained in the German Commercial Code accompanied by the German General Tax Code.



For incorporated companies and partnerships where no individual is a personally liable partner, there are three sets of criteria that determine the entity's size:

- Annual balance sheet total
  - Micro – €350,000
  - Small – €6m
  - Medium – €20m
  - Large – over €20m
- Annual turnover
  - Micro – €700,000
  - Small – €12m
  - Medium – €40m
  - Large – over €40m
- Average number of employees per year:
  - Micro – 10 employees
  - Small – 50 employees
  - Medium – 250 employees
  - Large – over 250

A company must satisfy at least two of the above criteria to be allocated to one of the classes. Publicly quoted companies are always treated as large companies.

The German Commercial Code requires the annual financial statements of medium-sized and large companies to be audited. The audit must be carried out by a certified public accountant.

All companies must prepare proper books and accounting records that comply with German regulations. At each financial year-end a company

must prepare financial statements consisting of a balance sheet and a profit and loss statement.

The consolidated financial statements of companies whose securities trade in a regulated market must be prepared using International Financial Reporting Standards (IFRS), as adopted by the EU. Other companies are permitted to use IFRS or German generally accepted accounting principles (GAAP).

## 2.6 Filing Requirements

The scope of disclosures required by the German Commercial Code varies depending on the company's size (see 2.5). All documents must be submitted electronically no later than one year after the end of the relevant financial year.

Large companies must file financial statements comprising a balance sheet, a profit and loss statement, notes and a management report, and an audit certificate at the German commercial registry. Financial statements must also be published in the German Federal Gazette.

Medium-sized companies are only obliged to file their financial statements at the German commercial registry and to announce in the German Federal Gazette that the documents have been filed.

Small and micro companies need file only the balance sheet and notes at the German commercial registry. They also have to announce the filing of their documents in the German Federal Gazette.



# 3 Finance and Investment

## 3.1 Exchange Control

The German government does not impose exchange controls, but there are several reporting requirements.

A customs form must be completed if more than €10,000 in cash is carried when crossing a non-EU border. Further, cash amounts of more than €10,000 must be declared on request when crossing an EU border.

Any payment transfer exceeding €12,500 from or to Germany must be reported. Direct investment from or to Germany, if the participation equals or exceeds 10% and the balance sheet total of the investment exceeds €3m, must also be reported. Residents must report receivables or liabilities abroad if they total more than €5m each month.

## 3.2 Banking and Sources of Finance

The German Central Bank (Bundesbank) is responsible for (amongst others) interest rates, monetary policy, and payment systems. It is independent of the Government. The regulation of insurance undertakings, pension funds, stock exchanges and markets, asset management companies and investment funds is the responsibility of the Federal Financial Supervisory Authority (BaFin). The Authority shares banking and financial services supervision with the Bundesbank.

German commercial banks are engaged in the full range of banking activities, including finan-

cial and lending services for businesses. Funding is also available through private equity companies, venture capital firms, and subsidies at national level.

Further information and advice can be found at Germany Trade & Invest (GTAI – <http://www.gtai.de/GTAI/Navigation/EN/welcome.html>).

## 3.3 Investment Incentives and Restrictions

There are generally no restrictions on foreign business investment in Germany.

# 4 Employment Regulations



## 4.1 General Employment Matters

### 4.1.1 Employment law

Employment is governed by numerous laws, including the Civil Code (Bürgerliches Gesetzbuch), the Works Constitution Act (Betriebsverfassungsgesetz – BetrVG) and the Collective Bargaining Act (Tarifvertragsgesetz – TVG); employment relations provisions, such as paid leave, employment protection and dismissal, are provided for in smaller, separate laws.

### 4.1.2 Employment contract

Employment contracts do not have to be in writing. As soon as a person starts to work for an employer for a regular wage or salary, a contract of employment is deemed to be in place.

All employees must receive written terms of employment, which should include the following information:

- Place of work
- Job title or nature of work
- The employment start date
- The expected duration of the contract if it is temporary
- Rate or calculation method of pay
- Hours of work
- Details of paid leave
- Sick pay and pension (if any)
- Notice period to quit by employer or employee.

The contract can include a probationary period, and details of whether this can be extended.

The statutory working day is eight hours, which can be extended to up to 10 hours in certain circumstances. There is no obligation for employers to pay higher hourly rates of pay for overtime. Employees are entitled to annual holiday of 24 working days (30 working days for most employees under collective agreements); Sundays and public holidays are specifically excluded (although certain exceptions apply).

### 4.1.3 Trade unions and employee representation

Employees have the right to join a trade union. Employees can also elect a works council in private sector firms with five employees or more aged over 18. In companies with more than 100 employees, an economic committee must be formed to liaise between the employer and the works council on economic affairs of the company, including the company's:

- Financial situation
- Production and investment programme
- Manufacturing and working methods, including new methods to be introduced
- Business relocation or merger/demerger, and
- Organisation or operational changes.

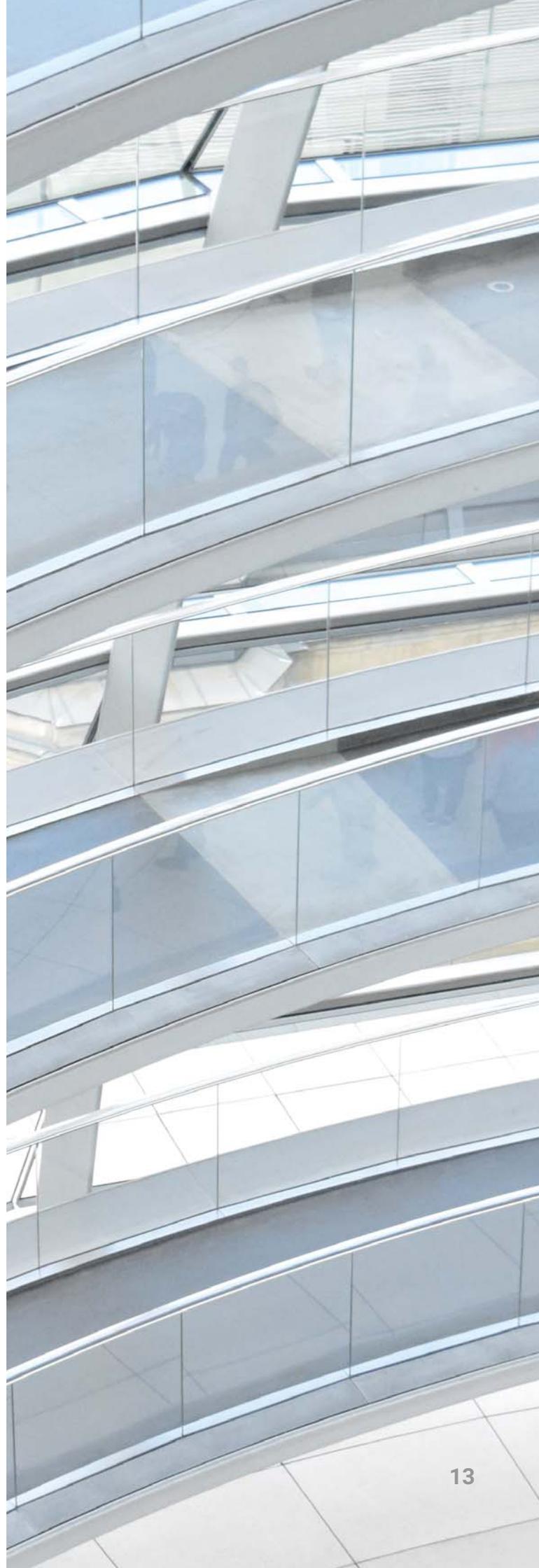
Strike action is subject to specific requirements being met to be legal, including a 75% vote in favour of such action under a secret ballot. Employees have no right to pay during legal strike action, but their other employment contract provisions remain in force.

## 4.2 Visas

Generally, those who are not nationals of EU/EEA countries and Switzerland require a visa to enter Germany. There are further exceptions to the visa rules: detailed information can be obtained from the German Foreign Office at <https://www.auswaertiges-amt.de/en/einreiseundaufenthalt>.

For stays not exceeding 90 days in a six-month period, a Schengen visa is required for entry into Germany. If the stay exceeds the 90-day limit, all non-EU/ EEA /Swiss citizens require either a residence or settlement permit. A national visa issued by German embassies and consulates can be transferred into a residence or settlement visa. Although a Schengen visa may be sufficient for the purpose of establishing a business, there is no guarantee that this will lead to the issuing of a residence permit. It is therefore advisable to apply for a residence permit if a person plans to set up a business or obtain regular employment.

If a foreign national is temporarily sent to Germany by his or her employer, it may not be necessary to seek prior permission from the Federal Employment Agency (Bundesanstalt für Arbeit – <http://www.arbeitsagentur.de>). Rules vary from country to country but as a general rule, certain occupational groups may be posted to Germany for up to three months in a 12-month period without approval from the Agency. In any case, employers must inform the Agency of such arrangements even if no permit is required.



# 5 Taxation

We have comprehensive tax guides covering 150 countries. To be sent these guides, please confirm which countries are of interest by email to [tax.desk@bakertillyinternational.com](mailto:tax.desk@bakertillyinternational.com)

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